IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 8177 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHASKARBHAI NIRANJANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Mr.Y.S. Lakhani, with
MS AMEE YAJNIK for the Petitioner.

Mr.A.Y. Kogje, Additional PUBLIC PROSECUTOR,
for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/07/2004

ORAL JUDGEMENT

Rule. Mr.Kogje, learned APP, waives service of

rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for hearing today.

By filing this application, the petitioner has applied for regular bail during the pendency of the trial. A complaint was filed by one Arvindkumar Dave against the petitioner and 16 other accused, who were the members of one Avdhoot Cooperative Credit Society. As per the complaint, the petitioner and other members of the said Society have fraudulently disbursed the amount of loan to various persons and that the credit society suffered monetary loss, as, the loan was disbursed without taking any security. The said complaint was filed under Sections 406, 409, 416, 420, 463, 464, 467, 468, 471, 477A and 506 read with Sections 114 and 120-B of the Indian Penal Code. On the basis of the said complaint, the petitioner is arrested and, at present, he is in judicial custody. In pursuance of the said complaint, all the office bearers / members, i.e. 17 persons, in all, were arrested, which include the present petitioner also. The petitioner was the Chairman at the relevant time.

The petitioner, initially, preferred a regular bail application before the learned Sessions Judge. However, that application was rejected. Therefore, the petitioner has filed this substantive bail application.

Mr.Lakhani, learned Advocate, appearing with Ms.Amee Yajnik, learned Advocate for the petitioner, has vehemently argued that except three accused, out of which one has not even applied for bail, rest of them, who have applied for bail, have been released on bail by incorporating appropriate conditions. This fact, as such, is not in dispute. Mr.Lakhani submitted that so far as the present petitioner is concerned, he was the beneficiary to one transaction, by which an amount of Rs.15,00,000/- was disbursed towards personal loan. He submitted that the petitioner had already repaid the personal loan, which he had taken from the aforesaid Society. On verification of the record, Mr.Kogje has accepted the aforesaid statement made by Mr.Lakhani.

Mr.Kogje, however, pointed out that the Society had also disbursed loan of Rs.15,00,000/- to one Utsav Investment, of which the wife of the petitioner was the sole proprietor. Mr.Kogje submitted that, it is, no doubt, true that this court had released the other accused on bail, i.e., 14 in number. However, according

to Mr.Kogje, the petitioner should be asked to repay at least that amount, which was disbursed by the Society, while he was the Chairman, in favour of his wife.

Mr.Lakhani, on the other hand, submitted that, after disbursing the said amount, his wife was duped, as, even though she was shown as the proprietor of Utsav Investment, actually, the said business was carried on by one Mr.Amit Shah, and brother of Mr.Amit Shah was the guarantor for the amount in question. He submitted that the said Amit Shah, along with one Mr.Sanjay Patel, defrauded his wife, by taking away the said amount, along with the other assets of Utsav Investment. He, however, submitted that, at present, the petitioner is practically hand to mouth as he repaid the said loan amount after selling his house. He, however, states, on instructions, that the petitioner will be able to arrange to repay Rs.7,50,000/-, for which he has prayed for some time. He submitted that, voluntarily, the petitioner is willing to deposit the said amount which was disbursed to Utsav Investment, of which the wife of the petitioner was the sole proprietor. However, he submitted that the shop, which is purchased by Mr.Amit Shah by utilizing the said amount, is already under attachment and the Board of Nominee Court has already passed a decree for recovery of the amount in question, which, according to Mr.Lakhani, includes this Rs.15,00,000/-, which was the amount of loan sanctioned by the petitioner in favour of his wife. However, on this aspect, since some civil dispute is pending, I am not required to express any opinion on this aspect. However, the voluntary statement of Mr.Lakhani is recorded that towards the loan amount, which was disbursed by the Society at the time when the petitioner was the Chairman, which comes to Rs.15,00,000/-, the petitioner will voluntarily deposit Rs.7,50,000/-, for which he has prayed for one year's time, as, according to him, the petitioner is financially ruined totally.

Mr.Kogje, learned APP, however, submitted that the investigation is already over and charge-sheet is already filed. He further submitted that the Society will have to file so many cases against the defaulting persons, for which, according to Mr.Kogje, the petitioner is required to assist the Custodian for recovering the amount, as a large amount is yet to be recovered. Mr.Lakhani submitted that the petitioner will cooperate with the Custodian by giving full cooperation so that the Society may initiate appropriate civil proceedings for recovering the amount in question by filing various suits or by attaching the properties of defaulters or even by auctioning the same in accordance with law.

Considering the fact that this Court has released about 14 accused on bail, of course, by incorporating the various conditions and since the petitioner has already deposited Rs.15,00,000/-, which was the amount of the personal loan, which he had taken from the Society, and considering the fact that the petitioner had made voluntary statement that he will deposit Rs.7,50,000/-, by depositing the same before the Custodian and considering the other bail orders passed by this Court, as well as considering the aspect of parity as well as considering the order, dated 18.8.2003, passed by this Court in Criminal Miscellaneous Application No.6125 of 2003, wherein this Court has released Mr.Amit Shah, on bail, and against whom the allegation is that he introduced fake persons to the Society and the said persons were given loan by the Society and considering the fact that even as per the say of the Custodian, who is represented by Mr.K.L. Pandya, that the presence of the petitioner may be required for initiating legal proceedings, the petitioner is ordered to be released on bail and the statement of Mr.Lakhani is also recorded that the petitioner will deposit Rs.3,75,000/- by 30th November, 2004 and Rs.3,75,000/- by 31st March, 2005, before the Custodian. Mr.Lakhani submitted that the petitioner will file necessary undertaking before this Court and such undertaking will be filed latest by 31st July, 2004 before the Registry of this Court and the copy of the same should be given to Mr.Kogje, learned APP.

The office may accept the vakalatnama of Mr.K.L. Pandya, who is appearing on behalf of the Custodian.

Accordingly, the petitioner is granted regular bail during the pendency of the trial, on his executing a personal bond in the sum of Rs.1,00,000/-, with one surety of the like amount, to the satisfaction of the lower court.

Over and above the aforesaid conditions, the petitioner shall also be subjected to the following conditions :-

(a) That the petitioner will cooperate with the Custodian for the purpose of filing necessary cases for recovery of the loan amount;

(b) He will surrender his passport immediately before the concerned Police Station, if he is holding any passport;

(c) He is to give full cooperation to the Custodian for the purpose of recovery of the amount in question and for that purpose, he will visit the Office of the Custodian at Nadiad, every Monday between 11.00 a.m. and 2.00 p.m.;

(d) He shall not take undue advantage of his liberty or abuse this liberty;

(e) He shall not act in a manner injurious to the interest of the Prosecution;

(f) He shall maintain law and order;

(g) He shall furnish the particulars of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(h) He shall not leave the local limits of Gujarat State without prior permission of the concerned Sessions Judge.

The Application is accordingly allowed. Rule is made accordingly made absolute.

19th July, 2004 (P.B. Majmudar, J.)

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(apj)